

## 37 Am. Jur. 2d Fraud and Deceit § 76

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### Fraud and Deceit

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#### IV. False Representations

##### B. Necessity that Representation Be of Fact; Opinions

##### 3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

##### b. Where Relation of Trust and Confidence Exists

## § 76. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 222](#) (Instruction to jury—Expressions of opinion or affirmations of fact—Statements by one having expert knowledge)

It is settled that an expression of opinion may, under many circumstances, amount to fraud where there is a relation of trust and confidence between the parties.<sup>1</sup> A fiduciary relationship between the parties imposes upon the one who is trusted a duty not only to state truly all matters, whether of fact or opinion,<sup>2</sup> but also to disclose all material facts.<sup>3</sup>

#### Observation:

Under the view of the Restatement Second, Contracts, to the extent that an assertion is one of opinion only, the recipient is not justified in relying on it unless the recipient: (1) stands in such a relation of trust and confidence to the person whose opinion is asserted that the recipient is reasonable in relying on it; or (2) reasonably believes that, as compared with himself or herself the person whose opinion is asserted has special skill, judgment or objectivity with respect to the subject matter; or (3) is for some other special reason particularly susceptible to a misrepresentation of the type involved.<sup>4</sup>

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Footnotes

- <sup>1</sup> Vokes v. Arthur Murray, Inc., 212 So. 2d 906, 28 A.L.R.3d 1405 (Fla. 2d DCA 1968); Cheung-Loon, LLC v. Cergon, Inc., 2012 WL 1678105 (Tex. App. Dallas 2012); Tetreault v. Campbell, 115 Vt. 369, 61 A.2d 591 (1948).
- <sup>2</sup> Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 961 F. Supp. 305 (D.D.C. 1997); Burgdorfer v. Thielemann, 153 Or. 354, 55 P.2d 1122, 104 A.L.R. 1407 (1936); Poole v. Camden, 79 W. Va. 310, 92 S.E. 454 (1916).
- <sup>3</sup> § 201.
- <sup>4</sup> Restatement Second, Contracts § 169.

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